

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

HUSKIE KEE,

Petitioner,

v.

No. 1:18-mc-21

BLOOMFIELD NURSING AND  
REHABILITATION,  
SOUTHWEST COMPANIES, and  
NORTHERN NAVAJO MEDICAL  
CENTER, INDIAN HEALTH SERVICES,

Respondents.

**EMERGENCY PETITION FOR DEPOSITION BEFORE ACTION**

COMES NOW Petitioner, Huskie Kee, by and through his attorneys, Guebert Bruckner Gentile P.C. (Terry R. Guebert and Laura E. Horton) and hereby files this Petition for Deposition Before Action. Under Fed. R. Civ. P. 27 this petition is being filed to perpetuate the testimony of Petitioner, Huskie Kee, regarding his residency at Bloomfield Nursing and Rehabilitation, including what led to his stay there and what has happened since his stay there. Under Rule 27(a) as grounds therefore, Petitioner states as follows:

a. Petitioner expects to be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought because there is a lack of sufficient information to draft the complaint under the constraints of Fed. R. Civ. P. 11. The testimony sought to be preserved that is discussed herein is not being sought to discover or uncover information

necessary to file suit. It is sought for the purpose of preserving Mr. Kee's testimony, which cannot be replicated, concerning the facts described below in light of his terminal diagnosis and expected imminent death.

b. The subject matter of the expected action is regarding Petitioner's residency at Bloomfield Nursing and Rehabilitation, including what led to his stay there and what has happened since his stay there. His interest in this matter is his right to recover for the damages and injuries he sustained as a result of the wrongful acts of the nursing home and his treatment at home and the hospital thereafter in allowing him to develop bed sores that became a Kennedy Terminal Ulcer.

c. Information exists that 55.7% of those diagnosed with Kennedy Terminal Ulcers have a life expectancy of less than six weeks from diagnosis. Upon information and belief, Petitioner was diagnosed on February 8 or 9, 2018, which means he is approaching 6 weeks with the condition.

d. The facts Petitioner desires to establish are his medical history, the history of this diagnosis, his pain and suffering over the last few months, an explanation of the medical care he received, and his recollection of the order of events including but not limited to: negligence, battery, negligent infliction of emotional distress, intentional infliction of emotional distress, willful and wanton conduct, negligent hiring, training and supervision, and the wrongful death of Petitioner. The reason he desires to perpetuate it is due to the terminal nature of Kennedy Ulcers and his poor prognosis means he will be unavailable to provide deposition testimony when a lawsuit is able to be filed against Respondents.

e. Petitioner expects the adverse parties to be:

a) Bloomfield Nursing and Rehabilitation, Office of General Counsel, 803 Hacienda Lane, Bloomfield, NM 87413.

b) Southwestern Companies, Office of General Counsel, 408 N. Auburn Avenue, Farmington, NM 87401.

c) Northern Navajo Medical Center, c/o Office of General Counsel/General Law Division, U.S. Department of Health and Human Services, 330 C Street S.W., Switzer Building, Suite 2600, Washington, D.C. 20201.

d) Name of persons examined: Huskie Kee, Box 1443, Shiprock, NM 87420, Petitioner, currently residing at Northern Navajo Medical Center, who will testify to the facts described in subsection (c).

WHEREFORE, Petitioner respectfully requests this Court issue an order authorizing Petitioner to have his own deposition taken, for the purpose of preserving and perpetuating his testimony on April 6, 2018 due to his prognosis.

GUEBERT BRUCKNER GENTILE P.C.

By /s/ Terry R. Guebert  
Terry R. Guebert  
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*Attorneys for Petitioner Huskie Kee*

This is to certify that on this 29<sup>th</sup> day of March, 2018, the foregoing Emergency Petition for Deposition Before Action was filed electronically through the CM/ECF system, and I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants in the manner indicated:

Via first class mail, postage prepaid, addressed as follows:

Office of General Counsel/General Law Division  
U.S. Department of Health and Human Services  
330 C Street S.W.  
Switzer Building, Suite 2600  
Washington, D.C. 20201

Navajo Area Indian Health Service (NAIHS)  
P.O. Box 9020  
Window Rock, AZ 86515  
Fax: 505-368-6260

Bloomfield Nursing and Rehabilitation  
Office of General Counsel  
Office of Chief Executive  
803 Hacienda Lane  
Bloomfield, NM 87413

Southwestern Companies  
Office of General Counsel  
Office of Chief Executive  
408 N. Auburn Avenue  
Farmington, NM 87401  
[ivy.snider@southwesterncompanies.com](mailto:ivy.snider@southwesterncompanies.com)

/s/ Terry R. Guebert

Terry R. Guebert

Laura E. Horton

*Attorneys for Petitioner Huskie Kee*

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**AFFIDAVIT IN SUPPORT OF REQUEST TO PERPETUATE  
TESTIMONY OF HUSKIE KEE**

Terry R. Guebert, being first duly sworn, deposes and says:

1. That affiant is an attorney at law licensed to practice before all Courts in the State of New Mexico.
2. He received a signed fee and representation letter, signed by Huskie and Bessie Kee and witnessed by Jeannie Kee-Parsons dated March 27, 2018.
3. Petitioner, Huskie Kee, alleges that he suffered injuries as a result of his stay at Bloomfield Nursing and Rehabilitation and subsequent treatment by Southwest Companies home healthcare and Northern Navajo Medical Center thereafter in allowing him to develop bed sores that became a Kennedy Terminal Ulcer.
4. Affiant makes this Affidavit of his personal knowledge and is competent to testify to the matters contained herein.

5. Upon information and belief, Petitioner is currently in patient at Northern Navajo Medical Center in Shiprock, New Mexico, where he was admitted on March 8, 2018.

6. Upon information and belief, Petitioner's family was told that he had a "Kennedy Ulcer."

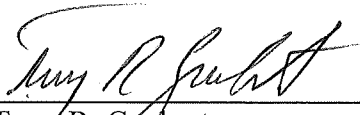
7. Upon information and belief, Kennedy Ulcers are also called "Kennedy Terminal Ulcers" and are characterized by rapid onset and rapid tissue breakdown.

8. Information exists that 55.7% of those diagnosed with Kennedy Terminal Ulcers have a life expectancy of less than six weeks from diagnosis. Upon information and belief, Petitioner was diagnosed on February 8 or 9, 2018, which means he is approaching 6 weeks with the condition.

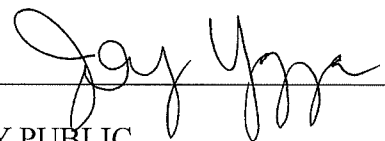
9. Due to Petitioner's extremely sensitive state, where he is currently in the hospital fighting for his life, Affiant does not feel he can, in good faith, share this poor prognosis contained within the Petition with Petitioner without grave detriment to his health and well-being.

10. Thus, Affiant submits this Affidavit in support of Petition to Perpetuate Petitioner's testimony to preserve Mr. Kee's testimony, which cannot be replicated, concerning the facts described below in light of his terminal diagnosis and expected imminent death.

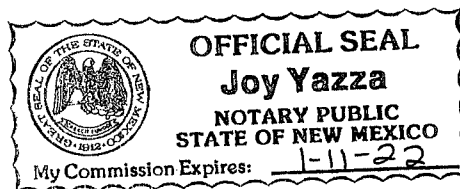
Further Affiant sayeth not.

  
Terry R. Guebert

SUBSCRIBED AND SWORN to before me this 29<sup>th</sup> day of March, 2018.

  
NOTARY PUBLIC

My Commission Expires:



1-11-22